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Ahmad Rashdi bin Amran v Bank Negara Malaysia

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HIGH COURT (PULAU PINANG) — ORIGINATING SUMMONS NO 24NCVC-60–01 OF 2013
WONG TECK MENG JC
22 SEPTEMBER 2014

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Civil Procedure — Striking out — Application for — Application to strike out originating summons — Company raided and seized gold purchased by plaintiff — Plaintiff claimed for written report on defendant's investigation — Whether plaintiff had right to application — Whether claim disclosed reasonable cause of action — Whether application scandalous, frivolous, vexatious and abuse of process of court — Rules of Court 2012 O 18 rr 19(1)(a), (b), (d) — Anti-Money Laundering and Anti-Terrorism Financing Act 2001 s 77

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The plaintiff had allegedly bought 750g of 999.9 gold at the price of RM156,750 from Geneva (M) Sdn Bhd ('GMSB'). The defendant had raided the premises of GMSB and seized all assets and documents. Among the assets seized was the said gold, causing losses to the plaintiff. In an originating summons, the plaintiff claimed for, inter alia, a written report by the defendant on their investigation against GMSB to the plaintiff. The plaintiff alleged that failure to do so would warrant an award of damages to the plaintiff. In the present application, the defendant applied to strike out the plaintiff's claim and argued that it did not disclose any reasonable cause of action; and that the plaintiff's claim was scandalous, frivolous and vexatious and an abuse of the court's process. The plaintiff argued that his application disclosed a reasonable cause of action as he was merely a bona fide third party having interest over the assets seized by the defendant.

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Held, allowing the defendant's application:

(1) As a special law to address the international abhorrence towards money laundering and the defendant, as an enforcement agency to effect such aim, must use the provision such as s 77 of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 ('AMLATFA'), which is necessary for such aim to be successful by ensuring the defendant to act bona fide without fear or favour. The act of seizing the said gold was done to protect and preserve the plaintiff's investment from being potentially abused by GMSB. The defendant's act was within the purview of s 77 of the AMLATFA resulting in the plaintiff's claims being dismissed on grounds that s 77 of the AMLATFA prevented any relief to be given to him (see paras 49 & 53–54).

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(2) The contractual obligation to deliver the specific item was between GMSB and the plaintiff, not the defendant. The relationship between the defendant and the plaintiff was too remote as to make the defendant owing some duty towards the plaintiff. The plaintiff ought to take recourse from GMSB and not the defendant due to the losses suffered as the relationship between the defendant and the plaintiff was too remote resulting in him having no reasonable cause of action against the defendant (see paras 55 & 57–58).

(3) Section 107A of the Criminal Procedure Code ('CPC') read together with sub-s 79(1) of the AMLATFA only allows access on the status of an ongoing investigation to be given to the complainant with a condition that no adverse effect can prejudice the said investigation. The plaintiff was not a complainant. He was only a mere bystander who had no right whatsoever to this application (see paras 64–65).

[Bahasa Malaysia summary

Plaintif telah mendakwa membeli emas 999.9 seberat 750g pada harga RM156,750 daripada Geneva (M) Sdn Bhd ('GMSB'). Defendan telah menyerbu premis GMSB dan merampas kesemua aset dan dokumen. Di antara aset-aset yang dirampas adalah emas tersebut, menyebabkan kerugian kepada plaintif. Dalam saman pemula, plaintif mendakwa untuk, antara lain, laporan bertulis oleh defendan atas siasatan mereka terhadap GMSB kepada plaintif. Plaintif mendakwa bahawa kegagalan untuk berbuat sedemikian akan mewajarkan ganti rugi kepada plaintif. Dalam permohonan ini, defendan memohon untuk membatalkan tuntutan plaintif dan berhujah bahawa ia tidak mengemukakan apa-apa kausa tindakan munasabah; dan bahawa tuntutan plaintif adalah remeh, temeh dan menyusahkan dan penyalahgunaan proses mahkamah. Plaintif berhujah bahawa permohonannya mengemukakan kausa tindakan munasabah kerana dia hanya pihak ketiga bona fide yang mempunyai kepentingan ke atas aset-aset yang dirampas oleh defendan.

Diputuskan, membenarkan permohonan defendan:

(1) Untuk undang-undang khusus bagi menangani kebencian antarabangsa terhadap pengubahan wang haram dan defendan sebagai agensi penguatkuasa untuk menguatkuasakan tujuan sedemikian, mesti menggunakan peruntukan seperti s 77 Akta Pencegahan Pengubahan Wang Haram dan Pencegahan Pembiayaan Keganasan 2001 ('AMLATFA'), yang mana adalah perlu untuk tujuan sedemikian berjaya dengan memastikan defendan untuk bertindak bona fide tanpa takut dan memihak. Tindakan merampas emas dilakukan untuk melindungi dan mengekalkan pelaburan plaintif daripada berpotensi disalahguna oleh GMSB. Tindakan defendan adalah dalam skop s 77 AMLATFA menyebabkab tuntutan plaintif ditolak atas alasan bahawa s 77

AMLATFA menghalang apa-apa relief diberikan kepadanya (lihat perenggan 49 & 53–54).

(2) Tanggungjawab kontraktual untuk menghantar barang spesifik tersebut adalah di antara GMSB dan plaintif, bukan defendan. Hubungan di antara defendan dan plaintif adalah terlalu tipis untuk membuatkan defendan menanggung duti terhadap plaintif. Plaintif patut meminta pertolongan daripada GMSB dan bukan defendan akibat kerugian yang dialami kerana hubungan di antara defendan dan plaintif adalah terlalu tipis mengakibatkannya tidak mempunyai kausa tindakan munasabah terhadap defendan (lihat perenggan 55 & 57–58).

(3) Seksyen 107A Kanun Tatacara Jenayah ('KTJ') dibaca bersama dengan sub-s 79(1) AMLATFA hanya membenarkan akses ke atas status siasatan yang sedang berjalan untuk diberikan kepada pengadu dengan syarat bahawa tiada kesan buruk yang boleh memprejudiskan siasatan tersebut. Plaintif bukan pengadu, dia hanya pemerhati yang tidak mempunyai apa-apa hak kepada permohonan ini(lihat perenggan 64–65).]

Notes

For cases on application for striking out, see 2(4) *Mallal's Digest* (4th Ed, 2014 Reissue) paras 8368–8383.

Cases referred to

Attorney-General of the Duchy of Lancaster v London and North Western Railway Company [1892] 3 Ch 274, CA (refd)

Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd [1993] 3 MLJ 36, SC (refd)

Castro v Murray (1875) LR 10 Exch 213 (refd)

Chan Kwai Chun v Lembaga Kelayakan [2002] 5 MLJ 273, HC (refd)

Khor Peng Chai & Ors v Bank Negara Malaysia & Anor [2012] 4 CLJ 987, HC (folld)

Malayan Banking Berhad v Gan Kong Yam [1972] 1 MLJ 32 (refd)

Moh Siew Tong v Cycle & Carriage Bintang Berhad [2014] 1 LNS 136, HC (refd)

Ng Hee Thoong & Anor v Public Bank Bhd [1995] 1 MLJ 281; [1995] 1 CLJ 609, CA (folld)

Ng Kian Chong & Ors v Saw Seng Kee [1994] 3 MLJ 691, HC (refd)

Pengurusan Danaharta Nasional Bhd v Tang Kwor Ham & Ors and another appeal [2007] 5 MLJ 125, FC (folld)

Premjeet Kaur a/p Nika Singh v Chief Inspector Wong Peng Teck & Ors [2011] 9 MLJ 449; [2012] 10 CLJ 698, HC (refd)

Tractors Malaysia Bhd v Tio Chee Hing [1975] 2 MLJ 1, PC (refd)

Young v Holloway and Another [1895] P 87 (refd)

Legislation referred to

Anti-Money Laundering and Anti-Terrorism Financing Act 2001 ss 4(1), 77, 79(1)
Banking and Financial Institutions Act 1989 s 25(1)
Central Bank of Malaysia Act 1958
Criminal Procedure Code s 107A
Interpretations Act 1967 s 17A
Rules of Courts 2012 O 18 rr 19, 19(1)(a), (1)(b), (1)(d)

(AR Effande & Partners) for the plaintiff.
(Bank Negara Malaysia, Legal Department) for the defendant.

Wong Teck Meng JC:

INTRODUCTION

[1] This is an application filed by the defendant to strike out the plaintiff's originating summons under O 18 r 19(1)(a), (b) and/or (d) of the Rules of Courts 2012 on the following grounds:

(a) that the claim did not disclose any reasonable cause of action; and

(b) that the claim is scandalous, frivolous and vexatious and the action is an abuse of the court's process.

THE PLAINTIFF'S CLAIM

[2] The plaintiff, vide an originating summons claims the following:

(a) that the defendant is hereby ordered to produce a written report on their investigation against Geneva (M) Sdn Bhd to the plaintiff within the duration fourteen days from the date of the order;

(b) failure for the defendant to produce the said report will warrant for an award of damages to the plaintiff for any damages suffered as a result of such failure;

(c) cost within cause; and

(d) such further and/or other order or relief that this honourable court deems fit and proper.

BACKGROUND FACTS

[3] The plaintiff claimed that on 29 August 2012, he had bought 750g of the 999.9 gold amounting to the total sum of RM156,750 from Geneva (M) Sdn Bhd, a private limited company ('GMSB').

[4] The plaintiff contended that among the terms and conditions set out by GMSB in their sale and purchase transaction which the former has agreed upon, entails that the delivery of the said gold to the plaintiff is to be done after five weeks from the completion of the said transaction.

[5] Before such delivery could be effected, on 1–2 October 2012, the defendant, a statutory body incorporated under the Central Bank of Malaysia Act 1958 (Act 519) which was then repealed and was replaced by the Central Bank of Malaysia Act 2009 (Act 701), in exercising its duty enshrined under sub-s 4(1) of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 ('Act 613') (hereinafter referred to as 'AMLATFA') read together with sub-s 25(1) of the Banking and Financial Institutions Act 1989 (Act 372) (hereinafter referred to as 'BAFIA'); has raided the premise of GMSB and seized all assets and documents of the said premise.

[6] Among the assets seized was that of the gold purchased by the plaintiff and all 16 other customers of GMSB which resulted in failure on the part of GMSB to duly deliver the said gold as per their agreed terms.

[7] As a result of such failure, the plaintiff had suffered loss and hence together with the other 16 customers affected by the said raid, had brought this matter to the attention of this honorable court.

[8] In the midst of replying the affidavits, the defendant thereafter filed this instant application to strike out the plaintiff's claim.

ISSUES TO BE CONSIDERED

[9] This matter together with 16 other suits were brought before me involving the same defendants having similar claim arising from a similar cause of action. After perusing the cause papers and submissions, I am of the opinion that there is only two issues to be determined by me which are as follow:

(a) whether the plaintiff's claim discloses any reasonable cause; and

(b) whether the plaintiff's claim is scandalous, frivolous and vexatious and the action is an abuse of the court's process.

[10] In determining the first issue, I have to consider as to whether the defendant, as an enforcement agency under AMLATFA and BAFIA, had acted inter vires and in good faith when they seized and froze the properties belonging to the plaintiff.

[11] As for the second issue, it can be broken up to two sub-issues mainly:

(a) whether the plaintiff's claim is scandalous, frivolous and vexatious; and

(b) whether the plaintiff's claim is an abuse of the court's process.

[12] For the first sub-issue, in order to see as to whether such claim is scandalous, frivolous and vexatious, I have to determine as to whether it is lawful for the defendant to seize and hold the plaintiff's property until such times deems fit for the property to be released and for the second sub-issue, I have to ascertain as to whether this application serves as a direct interference by the plaintiff with regards to the ongoing investigation on GMSB hence as an abuse of the court's process.

THE DEFENDANT'S SUBMISSION

[13] In arguing that the plaintiff's originating summons discloses no reasonable cause of action, the defendant has referred to s 77 of the AMLATFA as to justify that the act of seizing any assets in the premise of GMSB is lawful and therefore bars any potential litigation against them for any damages arising from it.

[14] At this juncture, the defendant then referred to the Federal Court case of *Pengurusan Danaharta Nasional Bhd v Tang Kwor Ham & Ors and another appeal* [2007] 5 MLJ 125 and argues that as a special law specifically enacted to meet an economic exigency, the AMLATFA was enacted for the sole purpose to protect the public interest and for the benefit of the public.

[15] Hence, bearing the above principle in mind, the defendant argues that their actions is protected under s 77 of the AMLATFA which prevents any actions (be it whether civil or etc) taken against the defendant in exercising their duty as an enforcement agency to commence an investigation in accordance with the prescribed law and in good faith.

[16] The defendant also argues that the plaintiff's application is scandalous, frivolous and vexatious as the latter's claim involves matters which is pending an ongoing investigation and close supervision of the attorney general's chambers therefore by allowing this application, it will interfere with the defendant's investigation on GMSB resulting in the prevention of the process of justice and public interest to be duly served.

[17] The defendant relies on the case of *Khor Peng Chai & Ors v Bank Negara Malaysia & Anor* [2012] 4 CLJ 987 as to support its argument that court usually would not interfere with any investigation made by any enforcement agency so long as it was made in good faith.

[18] Hence, the defendant argues that there is not an iota of evidence given by the plaintiff to show that the investigation work done which involves seizure of certain assets in GMSB's premise was unlawful and mala fide.

[19] Hence, in the absence of the evidence to the contrary, the defendant argues that he is protected under s 77 of the AMLATFA as such duty was exercised in good faith and in accordance with the law therefore relinquishing any right whatsoever on the plaintiff to claim any damages against the defendant.

[20] In furtherance to the above matter, the defendant argues that there is a competing interest which involves his personal interest and the interest of the public rendering the latter to triumph over the former. With this argument at hand, the defendant then refers to the case of *Chan Kwai Chun v Lembaga Kelayakan* [2002] 5 MLJ 273 as to argue that public interest serves as a factor for any dismissal of claims by court.

[21] The defendant also claims that the plaintiff's claim is an attempt to abuse the court process and therefore should not be entertained by this court as it serves as an attempt to extract classified information on the ongoing investigation on GMSB which is within the purview of sub-s 79(1) of the AMLATFA.

[22] With this at hand, the defendant argues that sub-s 79(1) of the AMLATFA read together with the provision of s 107A of the Criminal Procedure Code (Act 593) (hereinafter referred to as the 'CPC') only allow access on the status of an ongoing investigation to be given to the complainant with a condition that no adverse effect that can prejudice the said investigation.

[23] With this proposition, the defendant then refers to the case of *Premjeet Kaur a/p Nika Singh v Chief Inspector Wong Peng Teck & Ors* [2011] 9 MLJ 449; [2012] 10 CLJ 698 as to argue that the status of any investigation is to be regarded as secret documents and therefore could not be accessed by the defendant.

THE PLAINTIFF'S SUBMISSION

[24] The plaintiff on the other hand maintains that his application discloses a reasonable cause of action as he is merely a bona fide third party having interest over the assets seized by the defendant. Due to the actions of the defendant, the plaintiff argues that he has suffered loss.

[25] He also argues that there was no reasonable explanation given by the

plaintiff for the seizure of the said gold which was prolonged for more than ten months.

[26] With this proposition at hand, the plaintiff argues that up till now, none of the directors of GMSB was being prosecuted or convicted, by what means could the defendant justify that there is a serious offence committed by GMSB warranting them to prolong the seizure of the plaintiff's property.

[27] The plaintiff also in his submission reiterates that his application is not scandalous, frivolous and vexatious and not an abuse of the court's process by arguing that in order for the defendant to ensure protection under s 77 of the AMLATFA, he must first prove that the investigation was indeed executed in good faith.

[28] He also relies on sub-s 79(1) of the AMLATFA and submits that there is an exception to the rules of non-disclosure of investigation report under this act that the court do have such power for the disclosure of the said document.

THE LAW

[29] Before arriving to any findings as to whether the defendant's application should or should not be allowed, it is pertinent to address the relevant principle of law on this application.

[30] Order 18 r 19(1) of the ROC 2012 is as follows:

> 19(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement, of any writ in the action, or anything in any pleading or in the endorsement, on the ground that –
>
> (a) it discloses no reasonable cause of action or defence, as the case may be;
>
> (b) it is scandalous, frivolous or vexatious;
>
> (c) it may prejudice, embarrass or delay the fair trial of the action; or
>
> (d) it is otherwise an abuse of the process of the Court, and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

[31] With this, I refer to the the Supreme Court in the case of *Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd* [1993] 3 MLJ 36 at p 40 as per the following:

> ... The principles upon which the court acts in exercising its power under any of the four limbs of O 18 r 19(1) of the RHC are well settled. It is only in plain and

obvious cases that recourse should be had to the summary process under this rule (per Lindley MR in *Hubbuck & Sons Ltd v Wilkinson, Heywood & Clark Ltd*, and this summary procedure can only be adopted when it can be clearly seen that a claim or answer is on the face of it 'obviously unsustainable' (see A*G of Duchy of Lancaster v L & NW Rly Co*) ....

[32] Having the advantage of presiding over this matter, I am of the opinion that the relevant points that I need to discuss upon is of matters under O 18 r 19(a), (b) and (d) of the ROC 2012.

[33] As for the first issue which is relevant to O 18 r 19(a), ie that the plaintiff's application did not disclose any reasonable cause of action, I refer to the case of *Ng Kian Chong & Ors v Saw Seng Kee* [1994] 3 MLJ 691 at pp 698–699 as follows:

... It is said that a reasonable cause of action would mean a cause of action with some chance of success when only the allegations in the pleadings are being considered (*Drummond-Jackson v British Medical Association* [1970] 1 All ER 1094; [1970] 1 WLR 688, CA). The mere fact that the cause of action is weak, and not likely to succeed, is no ground for striking it out (*Wenlock v Moloney* [1965] 2 All ER 871; [1965] 1 WLR 1238). There are several instances where the statement of claim will be struck out and the action dismissed, eg in an action of contract if it appears that there is no contract between the parties or no contract valid in law; or a totally illegal contract; or the cause of action brought solely to obtain relief from the court which has no power to grant it; and, last but by no means least, where relief is sought on a ground in which no such relief could be obtained (see *South Hetton Coal Co v Haswell, Shotton & Easington Coal and Coke Co* [1898] 1 Ch 465; *Humphrys v Polak* [1901] 2 KB 385; *Shaw v Shaw* [1965] 1 All ER 638; [1965] 1 WLR 537; *Wing v Burn* (1928) 44 TLR 258 and *Johnston v Johnston* (1884) 33 WR 239 (CA) ....

[34] For the second first issue which is relevant to O 18 r 19(b) that the plaintiff's application is scandalous, frivolous and vexatious, I hereby refer to the definition given by the High Court case of *Moh Siew Tong v Cycle & Carriage Bintang Berhad* [2014] 1 LNS 136 at p 11 of the judgment that '... The words *'frivolous' or 'vexatious' generally refer to a groundless action with no prospect of success, often raised to embarrass or annoy the other party to the action ...*' (Emphasis added.)

[35] In arriving at the decision in the case of *Moh Siew Tong*, the High Court also referred to the passage given in the case of *Attorney-General of the Duchy of Lancester* that 'frivolous or vexatious actions mean cases which are obviously frivolous or vexatious or obviously unsustainable.'

[36] A thorough explanation was also given by Raja Azlan Shah J (as he was then) in the case of *Malayan Banking Berhad v Gan Kong Yam* [1972] 1 MLJ

32 at p 33 para B, as follows:

> No precise legal *definition can be found as vet as to the meaning of* 'no reasonable defence' or '*frivolous or vexatious*' or 'tending to delay the fair trial or the action', but *as can be observed a pleading will not be struck out under this rule 'unless it is not only demurrable but something worse than demurrable', that is, such that no legitimate amendment can save it from being demurrable*: per Chitty J, in *Republic of Peru v Peruvian Guano Co*. (Emphasize added.)

[37] I hereby refer to the passage given in the English case of *Young v Holloway and Another* [1895] P 87 that the pleading must, in all circumstances, be so obviously frivolous that to advance it forward must be an abuse of the process of the court.

[38] The third and final issue which is relevant to O 18 r 19(d) on the element of an abuse of court's process, I would like to refer to the case of *Castro v Murray* (1875) LR 10 Exch 213 which holds that the court will always guard its machinery from being used as a means of vexation and oppression in the process of litigation.

[39] Bearing the above principle in mind, it must be reminded time and time again that the power given by the ROC for this court to summarily dispose case must be exercised judicially. With this, I am obliged to refer to the caution given by Lord Diplock in the case of *Tractors Malaysia Bhd v Tio Chee Hing* [1975] 2 MLJ 1 '... that the power to dismiss an action summarily without permitting the plaintiff to proceed to trial is a drastic power and should be exercised with the utmost caution. The court will not permit a plaintiff to be ousted from the judgment seat, so to speak, except where the cause of action is obviously bad and almost 'incontestably bad' ...'.

FINDINGS

Whether the defendant's case discloses any reasonable cause of action

[40] In determining the first issue as to whether the plaintiff's claim discloses any reasonable cause of action as per the *Ng Kian Chong*'s case, this court has to ascertain as to whether from the claim sought by the plaintiff, a relief could be obtained from it.

[41] With this, in making such findings, mindful of Lord Diplock's caution on exercising my power transcribed under O 18 r 19 of the ROC, I am obliged to see as to whether claims which the plaintiff had sought due to the defendant's act of seizing the plaintiff's gold would warrant for a relief to be given to him.

[42] It is nevertheless an undisputed fact that one of the properties seized by the defendant belongs to the plaintiff and that he had suffered loss. However, I am in agreement with the defendant's argument that the act of seizure was authorised under the AMLATFA and BAFIA.

[43] Bearing this in mind, I believe that s 77 of the AMLATFA is appropriate for this court to refer to, which is as follows:

> 77 ... No action, suit, prosecution or other proceedings shall lie or be brought, instituted, or maintained in any court or before any other authority against –
>
> (a) the competent authority or the relevant enforcement agency;
>
> (b) any director or officer of the competent authority or the relevant enforcement agency, either personally or in his official capacity; or
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> (c) any person lawfully acting in compliance with any direction, instruction or order of a director or officer of the competent authority or the relevant enforcement agency, for or on account of, or in respect of, any act done or statement made or omitted to be done or made, or purporting to be done or made or omitted to be done or made, in pursuance of or in execution of, or intended pursuance of or execution of, this Act or any order in writing, direction, instruction or other thing issued under this Act if such act or statement was done or made, or was omitted to be done or made, in good faith ...

[44] This section was enacted to reflect the intention of Parliament to enact a law to address the international community abhorrence towards the activity of money laundering which was expressed by the then Deputy Minister of Finance, Dato' Dr Hj Shafie bin Hj Salleh at p 92 of the *Hansard* dated 9 May 2001 as follows:

> ... Isu pemindahan wang haram adalah merupakan satu isu antarabangsa yang memerlukan tindakan sejagat.
>
> Bagi Malaysia, pemindahan wang haram mendatangkan ancaman kepada sektor kewangan negara termasuklah kemajuan pusat kewangan pesisir pantai Labuan. la juga mendatangkan ancaman kepada usaha kita untuk menjadikan Kuala Lumpur sebagai pusat kewangan serantau ....

[45] Therefore, I hereby refer to the preamble of AMLATFA as follows: '... An Act to provide for the offence of money laundering, the measures to be taken for the prevention of money laundering and terrorism financing offences and to provide for the forfeiture of terrorist property and property involved in, or derived from, money laundering and terrorism financing offences, and for matters incidental thereto and connected therewith ...'.

[46] With the above provisions in mind, I am obliged to agree with the decision given by Alaudin FCJ (as he was then) in the Federal Court case of *Pengurusan Danaharta Nasional Bhd v Tang Kwor Ham & Ors and another*

appeal [2007] 5 MLJ 125 at pp 132–133 at as follows:

> ... In attempting to answer the question posed we would state from the outset that the Act is a special law specifically enacted to meet an economic exigency. It was passed in the public interest and for the public good. It is not out of place for the courts to take judicial notice of the financial crisis that the world underwent in the dying years of the last century.
>
> [36] To understand better the special position accorded to Danaharta, it is appropriate for us to refer to the preamble of the Act which reads as follows:
>
> > An Act to provide special laws for the acquisition, management, financing and disposition of assets and liabilities by the Corporation, the appointment of special administrators with powers to administer and manage persons whose assets or liabilities have been acquired by the Corporation and for matters connected therewith or incidental thereto.
> >
> > WHEREAS ...
> >
> > AND WHEREAS legislation is the only means by which the acquisition, management, financing of assets ... can be implemented promptly, efficiently ... for the public good:
> >
> > AND WHEREAS legislation is the only means by which special administrators may be appointed ... to administer and manage persons whose assets... have been so acquired:
> >
> > AND WHEREAS Pengurusan Danaharta Nasional Berhad has been established as a corporation incorporated under the Companies Act 1965 for such purposes.
>
> [37] The object of the Act was explained in clearer terms in the speech delivered by the then Minister of Finance in Parliament while introducing the Bill for the Act. The material parts of it (in the original text) read as follows:
>
> > ... suatu akta untuk memberi kuasa kepada Pengurusan Danaharta Nasional Berhad untuk mengambil alih pinjaman-pinjaman ... seterusnya menguruskan pinjaman dan aset serta melaksanakan rancangan menyusun semula aset-aset ...
> >
> > Dengan itu kerajaan telah memutuskan untuk menubuhkan sebuah syarikat yang dikenali sebagai Pengurusan Danaharta Nasional Berhad ... untuk mendapatkan kembali pembayaran ke atas hutang-hutang tersebut.
> >
> > ...
> >
> > Untuk berjaya mencapai objektifnya Danaharta perlu berupaya mengurus dan menyelesaikan ... Dengan itu syarikat ini tidak boleh beroperasi seperti syarikat biasa dan dikongkong oleh peraturan dan perundangan transaksi perniagaan. Untuk tujuan ini, Danaharta akan ditubuhkan sebagai sebuah syarikat berkanun yang diperbadankan di bawah Akta Syarikat 1965 dengan kuasa-kuasa yang akan diberikan oleh sebuah akta Parlimen. Status sebagai sebuah syarikat berkanun akan memberi Danaharta ... kuasa undang-undang yang khusus bagi memenuhi objektifnya.
> >
> > ...

> Justeru itu adalah difikirkan wajar kerajaan menggubal sebuah rang undang-undang dengan memberi kuasa-kuasa tertentu kepada Danaharta untuk melaksanakan tugas dan tanggungjawabnya....

[47] The learned FJC had also referred to s 17A of the Interpretation Act 1967 (Act 388) on the 'purposive approach' in statutory interpretation as follows:

> ... [42] Section 17A of the Interpretation Acts 1948 and 1967 (Act 388) provides:
>
> > 17A In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.
>
> [43] The provision of s 17A above is what is normally referred to as the 'purposive approach' in statutory interpretation. The same approach was adopted by the Federal Court in *DYTM Tengku Idris Shah Ibni Almarhum Sultan Salahuddin Abdul Aziz Shah v Dikim Holdings Sdn Bhd & Chan Teik Huat* [2002] 2 MLJ 11; *Lau Kong Co Ltd v Thong Guan Co Pte Ltd* [2004] 4 MLJ 1 and *Hokkien Cemeteries, Penang v Majlis Bandaran Pulau Pinang* [1979] 2 MLJ 121.
>
> [44] The object of Parliament in enacting this law has been clearly stated in the preamble to the Act. The Act was required in the public interest to promote the revitalisation of the nation's economy. It was against this background that the Act was passed by Parliament in July 1998. We find the purpose is clear and unambiguous.
>
> [45] In this regard, a knowledge of the matters considered by the legislature in enacting this law is relevant. Further, it is permissible for the courts, as held by the Federal Court in *Chor Phaik Har v Farlim Properties Sdn Bhd* [1994] 3 MLJ 345 to resort to the *Hansard* as an aid to interpretation. We can therefore refer to the policy speech of the then Minister of Finance in Parliament while introducing the Bill to the Act (see para 37 above) ....

[48] Henceforth, in the like manner as per the case of *Pengurusan Danaharta Nasional Bhd*, it is to be concluded that AMLATFA is a special law to meet an economic exigency. It was passed in the public interest and for the public good.

[49] Therefore, as a special law to address the international abhorrence towards money laundering ie to vanquish any evidence or trail of money laundering activities in Malaysia, the defendant, as an enforcement agency to effect such aim must be provision such as s 77 of the AMLATFA is necessary for such aim to be successful by ensuring the defendant to act bona fide without fear or favor.

[50] Be it as it may, though this section protects the defendant from any potential civil suit, it is only limited to a bona fide and lawful exercise of duty of an enforcement agency.

[51] Looking into the pleadings filed, the plaintiff did not in any way raised that the act of seizure done by the defendant is bad in law but merely questions on the fact that he was not furnished any reasonable explanation for such seizure or GMSB has not committed such offence on the fact that the directors were not arrested and tried for it. I find that this is merely an assumption and therefore should not be taken into account as it is irrelevant.

[52] Hence, based on the above proposition, as the plaintiff has failed to contest on the validity of such seizure done by the defendant in any of his pleadings, I am of the opinion that he had agreed to the fact that such procedure was done in good faith and was good in law. My opinion is premised on the decision in the case *Ng Hee Thoong & Anor v Public Bank Bhd* [1995] 1 MLJ 281; [1995] 1 CLJ 609 which holds that '... failure of the opponent to contradict is usually treatd as an admission by him of the fact so asserted ...'.

[53] Moreover, I find that the act to seize the said gold was done for the purpose to protect and preserve the plaintiff's investment from being potentially abused by GMSB.

[54] Thus, the defendant's act is within the purview of s 77 of the AMLATFA resulting in the plaintiff's claims to be dismissed on the grounds that s 77 of the said act prevents any relief to be given to him; in other words, the plaintiff's claim had not disclosed any reasonable cause of action.

[55] In furtherance to this matter, I am also of the opinion that the plaintiff's claim has no reasonable cause of action as the relationship between the defendant's 'so-called' liability and the damages suffered was too remote. This is based on the fact that the contractual obligation to deliver the specific item was between GMSB and the plaintiff, not the defendant.

[56] Furthermore, it was pleaded by parties that one of the terms of the said purchase and sale agreement entails for GMSB to deliver the said gold within five weeks after the completion of the said transaction ie five weeks after 29 August 2012 (which falls on 26 September 2012), however, until 2 October 2012, no delivery was made. Hence, if GMSB had expediently delivers the said gold to the plaintiff on 26 September 2014 or before the end of September as per the agreement, the plaintiff would not suffer any loss.

[57] It is also important to note that, the plaintiff himself has admitted to the fact that he is a third party to this matter further heightens my opinion that the relationship between the defendant and the plaintiff is too remote as to make the defendant owing some duty towards the plaintiff.

[58] In a nutshell, it is of the opinion that the plaintiff ought to take recourse

from is the GMSB and not the defendant due to the loss suffered as the relationship between the defendant and the plaintiff is too remote resulting in him having no reasonable cause of action against the defendant.

Whether the plaintiff's claim is scandalous, frivolous and vexatious

[59] One of the grounds of which the defendant had relied upon for this application is that the plaintiff's claim is scandalous, frivolous and vexatious on the ground that as the said act of seizing any documents and assets at the GMSB was done for the purpose to assist in the defendant's investigation against GMSB, as it will disrupt the defendant's investigation.

[60] In applying the principle that *a groundless action with no prospect of success, often raised to embarrass or annoy the other party to the action* for it to be scandalous, frivolous and vexatious; whilst being mindful to Raja Azlan Shah's opinion on this matter that *a pleading will not be struck out under this rule 'unless it is not only demurrable but something worse than demurrable', that is, such that no legitimate amendment can save it from being demurrable*, I have to ascertain as to whether the disruption of the defendant's investigation would not just annoy the defendant, but it is so demurrable to the extent that no legitimate amendment can save the plaintiff's claim from being demurrable.

[61] In ascertaining the above, one must take into consideration on the importance of such investigation against the defendant. As per the Parliament's intention to reflect the international community's abhorrence against the money laundering activity by enacting the AMLATFA, it is of the view that the defendant's investigation is of a pertinent one as it was not only done to serve the interest of Malaysia, but the international community as a whole with regards to preserving economic exigency.

[62] I refer to sub-s 79(1) of the AMLATFA as per the following:

> ... 79(1) Except for the purpose of the performance of his duties or the exercise of his functions under this Act or when lawfully required to do so by any court or under the provisions of any written law, no person shall disclose any information or matter which has been obtained by him in the performance of his duties or the exercise of his functions under this Act ....

[63] I also would like to refer to s 107A of the CPC on the following:

> ... (1) Any person who has given information under section 107 may request for a report on the status of the investigation of the offence complained of in his information from the officer in charge of a police station where he gave the information.

A (2) The officer in charge of a police station shall give a status report on the investigation of such offence to the informant not later than two weeks from the receipt of the request made under subsection (1).

(3) Notwithstanding subsection (2), no officer in charge of a police station shall be required to provide a status report on an investigation of an offence –

B

(a) unless the offence complained of is a seizable offence;

(b) unless a period of four weeks has lapsed from the date of the giving of the information under section 107; and

C

(c) which contains any matter that is likely to adversely affect the investigation into the offence or the prosecution of the offence ....

[64] Reading these two provisions, I am in agreement with the defendant's argument that sub-s 79(1) of the AMLATFA read together s 107A of the CPC D only allow access on the status of an ongoing investigation to be given *to the complainant with a condition that no adverse effect that can prejudice the said investigation*.

[65] Based on the above proposition, the plaintiff in this case is not a E complainant, he is only a mere bystander to the defendant's application of which the plaintiff himself admitted to the fact that he is a bona fide third party to the investigation done by the defendant at the first paragraph of his affidavit, he has no right whatsoever to this application as embedded under s 107A of the CPC.

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[66] This matter is to ensure high level of confidentiality as it involves criminal matter. I hereby refer to case of *Premjeet Kaur a/p Nika Singh v Chief Inspector Wong Peng Teck & Ors* [2011] 9 MLJ 449; [2012] 10 CLJ 698 as per the following:

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> ... the court finds that the plaintiff's claims on this score are obviously misplaced and unsustainable. Mere failure to respond as the plaintiff would have liked would fall far short of a tortious act for which liability could be attached. *It must be borne in mind that in carrying out investigations into criminal offences, a high degree of confidentiality would be necessary to ensure the success of police operations and* H *investigations*. The court finds the plaintiff's complaints about the delay in recording her statement and the failure to respond to her and her counsel's calls to be frivolous, to say the least. *In any event it must be noted that under s 107A, it is the officer in charge of a police station and not the investigation officer who should give the status report, if it would not adversely affect the investigations. As such, the court finds the plaintiff's claims* I *against the defendant on this score to be clearly unsustainable*... (Emphasize added.)

[67] With the above in mind, the effect of which if this court allows the plaintiff's application, would not merely annoy the defendant, but it frustrates the defendant from legal obligation to investigate and prosecute a potential

money launder under AMLATFA. This would in turn cause the plaintiff's application being so demurrable to the extent that no legitimate amendment can save it from being demurrable.

[68] Moreover, I am in agreement with the High Court decision of *Khor Peng Chai & Ors v Bank Negara Malaysia & Anor* [2012] 4 CLJ 987 that the court must be slow to interfere with the enforcement matter, as per the following:

> ... *The court must be very slow to interfere with the enforcement matter of a statutory body and in so doing, refraining them from carrying out their responsibilities*. In the realm of administration of criminal justice in Malaysia, the approach is two pronged ie, investigation of crimes and the prosecution of criminal cases in court. The investigation of crime is the responsibility of the enforcement agency whilst the prosecution is solely in the hands of the Attorney-General, who has the power exercisable at his discretion to institute, conduct or discontinue any criminal proceedings (art 145(3) of the Federal Constitution and s 376 of the Criminal Procedure Code). The *decision to prosecute is solely legal, with public interest as the paramount consideration*. Section 44 of the AMLA is clearly part of the investigation of crimes in the administration of criminal justice in Malaysia .... (Emphasis added.)

[69] Therefore, it is observed that it would be wrong for me to allow the plaintiff's claim as it disrupts the provisions under AMLATFA which authorises the defendant to investigate and to prosecute. I am of the opinion that, when the courts are allowed to interrupt and usurp the functions and jurisdiction of enforcement agencies, as per the passage in the case of *Khor Peng Chai & Ors*, it is against pubic interest as it will result in the creation of utter chaos and confusion.

[70] This is affirmed in the case of *Chan Kwai Chun v Lembaga Kelayakan* [2002] 5 MLJ 273 as per the following:

> ... Another factor to be considered in deciding whether a decision by an administrative body can be revoked or not is to see whether public interest is in favour of revocation as opposed to the private interests of the beneficiary *Re Liverpool Corp; ex p Liverpool Taxi Fleet Operators Association* [1975] 1 WLR 701, Lord Denning *said that a public authority which has given an undertaking can depart from that undertaking 'only if they are satisfied that the overriding public interest requires it'*. ... (Emphasis added.)

[71] Bearing this matter in mind, as there is no evidence that there is overriding public interest present in the plaintiff's application, I must allow the defendant's claim under this limb as it is for the interest of the public as such interest holds greater weight as compared to the plaintiff's personal interest.

Whether the plaintiff's claim is an abuse of the court's process

[72] Based on the above findings, I find that if the plaintiff's claim is to be allowed by me, this would in a way be an abuse to the court's process as per the case of *Young v Holloway and Another* [1895] P 87 that the pleading must, in all circumstances, be so obviously frivolous that to advance it forward must be an abuse of the process of the court.

[73] This is due to the fact that by allowing the plaintiff's application would be a clear violation of s 77, sub-s 79(1) of the AMLATFA and 107A of the CPC. Besides that, it would result in a clear violation of public interest which in turn would result in this court's image to be tarnished as it will negate the court's role as protector of justice.

CONCLUSION

[74] Hence, applying the above stated established principles of law, I hereby allow the defendant's application and having to consider the pleadings, the affidavits filed herein and the argument by the respective counsel from both sides and having given a careful and serious consideration, I am of the view that the claim by the plaintiff discloses no reasonable cause of action, is scandalous, frivolous and vexatious and also an abuse of the process of the court.

[75] Based in the above considerations, I allow the defendant's application at encl (6) and cost of RM2,000 to be paid to the defendant. All the other defendants' application in the other 16 cases filed herewith is hereby allowed as in the same manner as this application before me.

Defendant's application allowed.

Reported by Afiq Mohamad Noor